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**Technical Response Memorandum**  
**Delaware City Refining Company, LLC Coastal Zone Permit**

TO: Robert P. Haynes, Esq., DNREC Hearing Officer  
FROM: Susan E. Love, AICP, Division of Energy and Climate *SKL For Susan Love*  
RE: Coastal Zone Act Permit for the DCRC Ethanol Marketing Project  
DATE: December 27, 2016

You have requested a Technical Response Memorandum that addresses the procedural history, statutory criteria and public comments for the Delaware City Refining Company, LLC ("DCRC") Ethanol Marketing Project ("the Project") and seek our recommendation regarding permit issuance.

The Project involves the utilization of existing tanks and existing marine loading equipment at the DCRC to enable denatured ethanol to be loaded from storage tanks to marine vessels and shipped to offsite facilities. The project will utilize the existing docking facilities at the refinery; no new major pieces of equipment are required, however minor upgrades may be necessary to pollution control equipment at the docks. The anticipated ethanol shipment at the piers will be up to 10,000 barrels per day on an annual average basis. Anticipated environmental impacts associated with this project are 0.8 tons per year of increased volatile organic carbon (VOC) emissions; the proposal includes construction of a vapor capture system project at the truck marketing terminal that would decrease VOC emissions at the refinery by 1.1 tons per year.

Procedural History

DCRC submitted an Application for a Coastal Zone Act Permit on August 19, 2016, to the Department's Coastal Zone Act (CZA) program. On August 26, 2016, the CZA program sent an e-mail to various DNREC staff soliciting review of and comment on the Project. Legal notices announcing the receipt and availability of the Coastal Zone Act Permit application were published in the News Journal and New Castle Weekly on August 28 and August 31, 2016, respectively. The Secretary signed the Secretary's Environmental Assessment Report on September 28, 2016, deeming the application preliminarily administratively complete and ready to proceed to a public hearing. Legal notices announcing the public hearing and the availability of the Coastal Zone Act Permit application were published in the News

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Journal and New Castle Weekly on October 2 and October 5, 2016, respectively. A public hearing was held on October 26, 2016, in New Castle, Delaware. At the public hearing, DCRC staff presented slides describing the Project. Among them was a slide indicating that emissions of VOCs would be 1.1 tons per year and would require an offset of 1.5 tons per year. This differed from the numbers presented in the application: VOC emissions of 0.8 tons per year, requiring an offset of 1.1 tons per year. On November 10, 2016, after being informed that CZA Program staff had noted the discrepancy between the numbers in the application and the numbers presented at the public hearing, DCRC submitted “supplemental information” to address the discrepancy. According to the Regulations Governing Delaware’s Coastal Zone, once public notice announcing a public hearing is advertised, no revisions to any application will be permitted (10.2). On November 22, 2016, DCRC submitted a letter requesting the withdrawal of the supplemental information, stating that the numbers presented in the application submission are, in fact, correct. The referenced letters from DCRC are attached hereto as Attachment A.

#### The Six Statutory Criteria

Title 7, Delaware Code, § 7004(b) requires the Secretary of the Department of Natural Resources and Environmental Control to consider six factors when deciding Coastal Zone Act permit requests:

(1) Environmental impact: The anticipated environmental impacts from the Project are primarily air emissions associated with the control of displaced vapors from loading Piers 2 and 3, for which an adequate Offset Project has been proposed. There will be no increase in water usage, wastewater generation, or storm water flow. Solid waste generated during operation of equipment installed as part of the Project is expected to be minimal and consistent with the waste streams currently generated by the existing process. There will be no hazardous wastes, no impact to wetlands, flora or fauna, no change in glare, heat, noise or vibration, or impact from radiation, electromagnetic interference and noxious odors.

(2) Economic effect: The net economic impact is expected to be positive. The application states that it is currently anticipated that approximately 20 to 25 workers will be engaged in direct Project construction activities. The weekly payroll is estimated to be \$110,000 for approximately 18 to 20 weeks. An estimated \$7,000,000 of construction services and supplies is to be purchased in Delaware.

(3) Aesthetic effect: Aesthetic effects are minimal. Minor modifications to existing equipment will maintain the equipment as of a similar kind, character, scope and appearance as existing equipment at the facility, and therefore will be aesthetically compatible with the existing facility and the surrounding land use.

(4) Number and type of supporting facilities required: No new facilities are required for this project. Existing above ground storage tanks and docking facilities will be utilized. No new roads, bridges, piers and/or docks, railroads, microwave towers, special fire protection services, traffic signals, sewer expansion, energy-related facilities expansion, pipelines, bulk hydrogen loading, or laydown areas will be required to support the proposed project.

(5) Effect on neighboring land uses: The proposed facility will be constructed within the footprint of an existing non-conforming use. Effects on neighboring uses will be minimal.

(6) County and municipal comprehensive plans: The proposed facility and operation is consistent with New Castle County’s and Delaware City’s Comprehensive Plans.

## Public Comments

Comments received during the public comment period primarily focused on whether the proposed action would constitute a new prohibited bulk transfer facility, whether DCRC is the proper permit applicant, and effects on Atlantic Sturgeon populations.

The proposed action does not constitute a “new” prohibited bulk product transfer facility. Transfer of petroleum products was occurring at this location prior to 1971, and this heavy industry use and its integrated docking facility are considered pre-existing, nonconforming use(s) under the Coastal Zone Act and its regulations. The DCRC is proposing to make minor upgrades to existing facilities to handle the transfer of ethanol to ships. Such upgrades are allowed under the Act and its regulations as an expansion or extension of the nonconforming use; DCRC has properly applied to the DNREC for a permit for these upgrades.

Ethanol is currently used as a blendstock at the Delaware City Refinery. In 2006, DNREC issued a Status Decision under the Coastal Zone Act which confirmed that receipt of ethanol at the existing Refinery docking facility was authorized under the CZA and did not need a permit. It also confirmed that the storage and blending of ethanol in Refinery equipment was not regulated by the CZA and did not need a permit. “New” activities at existing heavy industries that are not otherwise exempt under the CZA Regulations require a permit; DCRC has properly applied for a permit.

Concerns were raised about whether DCRC is the proper party to apply for the permit. The application indicates that DCRC owns the facility and previous DNREC permits have been issued to DCRC. DCRC confirmed its ownership in the post-hearing submission dated November 4, 2016 (attached hereto as Attachment 2). Based on these submissions, the concern that the wrong entity has applied for the permit is without merit on the current record.

In addition to the issues noted above, the Delaware Riverkeeper Network comments, dated October 26, 2016, discuss Atlantic Sturgeon mortalities. While the Department is certainly concerned about sturgeon populations, there appears to be little or no direct or indirect link between this project and sturgeon populations and the program received no comments or concerns from DNREC’s Division of Fish and Wildlife, the relevant DNREC Division on sturgeon issues, regarding this issue.

Finally, a concern was raised regarding crude oil shipments made by DCRC that exceeded permitted limits and allowable destinations. The shipment of crude oil is a matter unrelated to this pending permit application for the Ethanol Marketing Project and is being addressed separately.

## Conclusion and Recommendation

In signing the Secretary’s Environmental Assessment Report on September 28, 2016, the Secretary affirmed that the six criteria had been sufficiently addressed. As noted in the Procedural History, DNREC staff was notified of the Project and their review and comments were solicited; DNREC staff identified no additional issues in the comments that were received.

The Coastal Zone Act Program has reviewed the file regarding the CZA Permit Application from DCRC. The Program has no further comments or concerns. We recommend that the CZA Permit be issued.